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PTO/SB/65 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

07/23/2012 DALLEN 00000010 5623978

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NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5623978

Application Number: 688,692

Issue Date: April 29, 1997

Filing Date: July 29, 1996

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;  
original application number \_\_\_\_\_;  
original filing date \_\_\_\_\_

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

July 13, 2012  
Date

[Signature]  
Signature

Lyle Clemenson  
Typed or printed name of person signing Certificate

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This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1,450.<sup>00</sup></u>	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1,450.<sup>00</sup>

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ \_\_\_\_\_ (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ \_\_\_\_\_

## 5. MANNER OF PAYMENT

- ☒ Enclosed is a check for the sum of \$ 1,950.<sup>00</sup>
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_

## 7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. \_\_\_\_\_

OR

☒ Send refund check

## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

Lyle Clemenson  
Signature(s) of Petitioner(s)

July 13, 2012  
Date

Lyle Clemenson  
Typed or printed name(s)

Registration Number, if applicable

100 N. 74<sup>th</sup> Way  
Address

763-951-3294  
Telephone Number

Brooklyn Park, MN 55444  
Address

## ENCLOSURES:

- ☒ Maintenance Fee Payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)  
☐ Other: \_\_\_\_\_

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

July 13, 2012  
Date

Lyle Clemenson  
Type or printed name

Registration Number, if applicable

#### STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

The delay of maintenance fee payments resulted from:

A. Being an owner of a small company we met some unplanned costs associated with bringing product to market and was forced to make loans that were not planned.

B. After having had our company doing business at this location for 30 years the Minnesota Highway Department came and Eminent Domained us out of our location. Even though we some of our costs were reimbursed---we were not able to do marketing of our products for months and top of that it took a great deal of energy and there were other costs to the company---we lost paperwork, records, time, employees, & profits not being reimbursed. Had we been left at our location we believe we would have had our paperwork in order and the maintenance fees taken care of.

C. We failed to know/remember that USPTO did not send maintenance fee reminders

In summation, had we not had the above things take place we would have been more attentive to maintaining our paperwork and the necessary fees would have been paid.

(Please attach additional sheets if additional space is needed)



*Confidential*

promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

*Payment enclosed*

*Check 8466*

*1950*

The USPTO finance records reveal that the Office received only a \$200.00 fee on June 22, 2012 for the payment of the second maintenance fee and surcharge. The current small entity amount for the maintenance fee due at 7.5 years as set forth in 37 CFR 1.20(f) is \$1,425.00.

Additionally, the current amount for the surcharge after expiration where the late payment is unavoidable as set forth in 37 CFR 1.20(i)(1) is \$700.00. As the full amount of these fees has not been paid, the petition will not be treated on the merits until petitioner submits a "renewed" petition under 37 CFR 1.378(b), accompanied by the payment of the \$1,450.00 maintenance fee and the balance due for the surcharge in the amount of \$500.00 (\$700.00 - \$200.00 previously paid on June 22, 2012). Thus, the petition is dismissed. The proper petition form is enclosed for petitioner's convenience. Petitioner must submit the maintenance fee and surcharge in the amount due on the date the "renewed" petition is filed and the maintenance fee and surcharge are paid.

The Office reminds petitioner that under the statutes and regulations, the USPTO has no duty to notify a patent owner of the requirement to pay maintenance fees or to notify the patentee when the maintenance fee is due. While the Office mails maintenance fee reminders strictly as a courtesy, it is solely the responsibility of the patent owner to ensure that the maintenance fee is paid timely to prevent expiration of the patent. The failure to receive a maintenance fee reminder (or Notice of Patent Expiration) does not relieve the patentee of the obligation to timely pay the maintenance fee, nor will it constitute unavoidable delay if the patentee seeks reinstatement under the regulation. See Rydeen v. Quigg, 748 F. Supp. 900, 905 (D.D.C. 1990) (holding that failure to pay maintenance fee because patentee's attorney had not received customary notice from PTO alerting him it was due was not sufficient to establish unavoidable delay because PTO has no duty to provide notice that maintenance fee is due). A patentee who is required by 35 U.S.C. 41(c)(1) to pay a maintenance fee within 7 years and six months of the patent grant or face expiration of the patent, is not entitled to any notice beyond that provided by publication of the statute. See Rydeen, 748 F. Supp. at 906.

Moreover, the fact that a patentee may have been preoccupied with other matters does not excuse the delay in payment of a maintenance fee. A showing of diligence is essential to support a finding of unavoidable delay. There is no "sliding scale" based upon the priority given to maintaining this patent in force, or more diligently seeking reinstatement, *vis-à-vis* other matters. The issue is solely whether the maintenance, or reinstatement, of the patent at issue was conducted with the